

Appl. No. 09/862,830  
Atty. Docket No. AA471  
Amdt. dated 5/21/2004  
Reply to Office Action of 05/12/2004  
Customer No. 27752

### REMARKS

Claims 1-3, 5-7,9, 10, 12-14, 16, 18-20 and 22-30 are pending in the present application.

#### Rejection Under 35 USC 103 Over Hawkins

The Office Action rejects the claims under 35 USC 103(a) over Hawkins (U.S. Patent No. 5,490,608). The Office Action submits that Hawkins teaches all the claim limitations except the "coordinated element" claim limitation of the present invention. However, the Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to reasonably expect the portable container of Hawkins containing liquid bleach and powdered detergents to have a coordinated element such as container graphics and/or trade dress because every article/product of commerce contains a container graphics and/or trade dress. Applicants respectfully traverse this rejection. The present invention is directed *inter alia* to address the need for a kit for reducing consumer confusion about the multitude of fabric care combinations available, while minimizing the possibility of undesirable product interactions. Page 2, lines 16-20. The "coordinated element" is an essential claim limitation used to describe the present invention that attempts to address this unmet need.

The Federal Circuit has consistently held that a solution to a problem is a factor to be considered whether an invention would have been obvious to a person of ordinary skill in that art. *See, e.g., Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984) ("Nothing in the references alone or together suggests the claimed invention as a solution to the problem of crushing rigidly massive scrap"); *In re Benno*, 768 F.2d 1340, 1347, 226 USPQ 683, 687 (Fed. Cir. 1985) ("[Benno] had to invent a solution to that problem. . . . Neither reference hints at his solution"); *Weather Engineering Corp. of America v. United States*, 614 F.2d 281, 287, 204 USPQ 41, 46-7 (Ct. Cl. 1980) ("The near unanimous approach by the courts is that 'the prior art that is relevant in evaluating a claim of obviousness is defined by the nature of the problem confronting the would-be inventor'"); *In re Naber*, 494 F.2d 1405, 1407, 181 USPQ 639, 641 (CCPA 1974) ("even if one of ordinary skill in the art were moved to combine the references, there would be no recognition that the problem of combustible deposits had been solved"); *In re Aufhauser*, 55 C.C.P.A. 1477, 399 F.2d 275, 281, 158 USPQ 351, 355 (CCPA 1968) ("as in *United States v. Adams*, 383 U.S. 39, 86 S. Ct. 708, 15 L. Ed. 2d 572 (1966), what appellant had done was to observe an existing problem in the art which had not been solved by the prior art and then combine individually old concepts to solve that problem") (emphasis in original); *In re Rothermel*, 47 C.C.P.A. 866, 276 F.2d 393, 125

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USPQ 328, 331 (CCPA 1960) ("Where the invention for which a patent is sought solves a **problem** which persisted in the art, we must look to the **problem** as well as its **solution** if we are to properly appraise what was done and to evaluate it against what would be obvious to one having the ordinary skills of the art."); *In re Ratti*, 46 C.C.P.A. 976, 270 F.2d 810, 813, 123 USPQ 349, 351 (CCPA 1959) (the prior art did not teach "how to solve the **problems**" faced by the inventor). (Emphasis added).

The coordinated element may serve to remind the consumer that the multiple products herein are to be used in combination with each other, and/or may actually provide improved, or synergistic results when applied to a fabric article. Page 14, lines 27-30. The multiple products in the kit are "coordinated" in the referred-to products, product containers, and/or product formulations are specifically designed to be used and/or sold together, and to be compatible, complementary, synergistic, and/or easily recognizable as being part of the same system and/or kit.

In contrast, Hawkins is simply directed to a novel portable container having multiple compartments for receiving, etc., powders and liquids for the care of washable items. Column 1, lines 6-9. The Hawkins container is directed, e.g., "for individuals who live in apartments ... to carry a number of containers ... to a coin washing location. At the location, various loads of washing usually require multiple measuring of detergent or other substances used for the care of washable items." Column 1, lines 16-21. No mention is made of the problem, much less the solution, of reducing the confusion of the multitude of fabric care combination available while minimizing the possibility of undesirable product interactions. As such, Applicants submit that presently claimed invention is unobvious over Hawkins.

Rejection Under 35 USC 103 Over Riordan

The Office Action rejects the claims under 35 USC 103(a) over Riordan (U.S. Patent No. 6,105,812). The Office Action submits that Riordan teaches all the claim limitations except the "coordinated element" claim limitation of the present invention. However, the Office Action states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonable expect the dual chamber of Riordan containing two different products such a household detergents and fabric softener to have a brand name, container graphics and/or trade dress in the dual chamber because every article/product of commerce contains a brand name, container graphics and/or trade dress. Applicants respectfully traverse this rejection. The present invention is directed *inter alia* to address the need for a kit for reducing consumer confusion about the multitude of fabric care combinations available, while minimizing the possibility of

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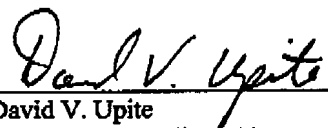
undesirable product interactions. Page 2, lines 16-20. The "coordinated element" is an essential claim limitation used to describe the present invention that attempts to meet address this unmet need. Applicants respectfully assert that no such suggestion is found in Riordan. In view of the foregoing, Applicants submit the claims are unobvious over the cited references.

Conclusion

Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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